



DEC - 6 1994

Reply to Attn of:

JE

TO: Distribution

FROM: JE/Director, Environmental Management Division

SUBJECT: Production Phase-out and Stockpiling of Ozone-depleting Substances

The elimination of ozone-depleting substances requires that the production of chlorofluorocarbons (CFC's) for emissive uses be phased-out by January 1, 1996. CFC's, used extensively in the production and operation of NASA hardware, are being replaced with alternatives. The qualification and implementation of alternative substances is a time consuming and costly process which must include the selection and qualification of alternatives, changes of contracts and specifications, procurement and delivery of new equipment, and installation, checkout and qualification of new processes. All of this effort must be completed by January 1, 1996, in order to avoid unacceptable program impacts.

The Clean Air Act Amendments of 1990 allow CFC's to be purchased prior to the production phase-out and stockpiled for future use. However, procurement of CFC's is becoming more expensive and difficult as the production phase-out approaches. Stockpiled CFC will also be subject to a Federal floor tax.

If your programs require the procurement of CFC's for stockpiling to meet future needs, those requirements need to be identified as soon as possible. Please advise my office of any such CFC stockpile requirements.

If you have questions or need further assistance, please call Mr. Paul Goozh at 202-358-1414 or Ms. Odean Serrano at 202-358-1308.

A handwritten signature in cursive script, appearing to read "R. E. Hammond".

R. E. Hammond

Enclosures

1. Executive Order 12843 of April 21, 1993
2. CFC Excise Tax Summary and Schedule

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WSTF/RA/Mr. Amidei

Presidential Documents

Title 3—

Executive Order 12843 of April 21, 1993

The President

Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances

WHEREAS, the essential function of the stratospheric ozone layer is shielding the Earth from dangerous ultraviolet radiation; and

WHEREAS, the production and consumption of substances that cause the depletion of stratospheric ozone are being rapidly phased out on a worldwide basis with the support and encouragement of the United States; and

WHEREAS, the Montreal Protocol on Substances that Deplete the Ozone Layer, to which the United States is a signatory, calls for a phaseout of the production and consumption of these substances; and

WHEREAS, the Federal Government, as one of the principal users of these substances, is able through affirmative procurement practices to reduce significantly the use of these substances and to provide leadership in their phaseout; and

WHEREAS, the use of alternative substances and new technologies to replace these ozone-depleting substances may contribute positively to the economic competitiveness on the world market of U.S. manufacturers of these innovative safe alternatives;

NOW, THEREFORE, I, WILLIAM JEFFERSON CLINTON, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the 1990 amendments to the Clean Air Act ("Clean Air Act Amendments"), Public Law 101-549, and in order to reduce the Federal Government's procurement and use of substances that cause stratospheric ozone depletion, do hereby order as follows:

Section 1. Federal Agencies. Federal agencies shall, to the extent practicable:

(a) conform their procurement regulations and practices to the policies and requirements of Title VI of the Clean Air Act Amendments, which deal with stratospheric ozone protection;

(b) maximize the use of safe alternatives to ozone-depleting substances;

(c) evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs for such materials and evaluate their use of and plans for recycling;

(d) revise their procurement practices and implement cost-effective programs both to modify specifications and contracts that require the use of ozone-depleting substances and to substitute non-ozone-depleting substances to the extent economically practicable; and

(e) exercise leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

Sec. 2. Definitions. (a) "Federal agency" means any executive department, military department, or independent agency within the meaning of 5 U.S.C. 101, 102, or 104(1), respectively.

(b) "Procurement" and "acquisition" are used interchangeably to refer to the processes through which Federal agencies purchase products and services.

ENCLOSURE 1

(c) "Procurement regulations, policies and procedures" encompasses the complete acquisition process, including the generation of product descriptions by individuals responsible for determining which substances must be acquired by the agency to meet its mission.

(d) "Ozone-depleting substances" means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Act Amendments. This includes both Class I and Class II substances as follows:

(i) "Class I substance" means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 Fed. Reg. 33753), including chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform and any other substance so designated by the Environmental Protection Agency ("EPA") by regulation at a later date; and

(ii) "Class II substance" means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 Fed. Reg. 33753), including hydrochlorofluorocarbons and any other substances so designated by EPA by regulation at a later date.

(e) "Recycling" is used to encompass recovery and reclamation, as well as the reuse of controlled substances.

Sec. 3. Policy. It is the policy of the Federal Government that Federal agencies: (i) implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone; and (ii) give preference to the procurement of alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. In implementing this policy, prior to final promulgation of EPA regulations on Federal procurement, Federal agencies shall begin conforming their procurement policies to the general requirements of Title VI of the Clean Air Act Amendments by:

(a) minimizing, where economically practicable, the procurement of products containing or manufactured with Class I substances in anticipation of the phaseout schedule to be promulgated by EPA for Class I substances, and maximizing the use of safe alternatives. In developing their procurement policies, agencies should be aware of the phaseout schedule for Class II substances;

(b) amending existing contracts, to the extent permitted by law and where practicable, to be consistent with the phaseout schedules for Class I substances. In awarding contracts, agencies should be aware of the phaseout schedule for Class II substances in awarding contracts;

(c) implementing policies and practices that recognize the increasingly limited availability of Class I substances as production levels capped by the Montreal Protocol decline until final phaseout. Such practices shall include, but are not limited to:

(i) reducing emissions and recycling ozone-depleting substances;

(ii) ceasing the purchase of nonessential products containing or manufactured with ozone-depleting substances; and

(iii) requiring that new contracts provide that any acquired products containing or manufactured with Class I or Class II substances be labeled in accordance with section 611 of the Clean Air Act Amendments.

Sec. 4. Responsibilities. Not later than 6 months after the effective date of this Executive order, each Federal agency, where feasible, shall have in place practices that, where economically practicable, minimize the procurement of Class I substances. Agencies also shall be aware of the phaseout schedule for Class II substances. Agency practices may include, but are not limited to:

(a) altering existing equipment and/or procedures to make use of safe alternatives;

(b) specifying the use of safe alternatives and of goods and services, where available, that do not require the use of Class I substances in new procurements and that limit the use of Class II substances consistent with section 612 of the Clean Air Act Amendments; and

(c) amending existing contracts, to the extent permitted by law and where practicable, to require the use of safe alternatives.

Sec. 5. Reporting Requirements. Not later than 6 months after the effective date of this Executive order, each Federal agency shall submit to the Office of Management and Budget a report regarding the implementation of this order. The report shall include a certification by each agency that its regulations and procurement practices are being amended to comply with this order.

Sec. 6. Exceptions. Exceptions to compliance with this Executive order may be made in accordance with section 604 of the Clean Air Act Amendments and with the provisions of the Montreal Protocol.

Sec. 7. Effective Date. This Executive order is effective 30 days after the date of issuance. Although full implementation of this order must await revisions to the Federal Acquisition Regulations ("FAR"), it is expected that Federal agencies will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.

Sec. 8. Federal Acquisition Regulatory Councils. Pursuant to section 6(a) of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this order is issued.

Sec. 9. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable by a non-Federal party against the United States, its officers or employees, or any other person.

William Clinton

THE WHITE HOUSE,
April 21, 1993.

[FR Doc. 93-8744

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Editorial note: For the President's remarks on Earth Day, see Issue 16 of the *Weekly Compilation of Presidential Documents*.

CFC EXCISE TAX SUMMARY AND SCHEDULE

President Bush signed H. R. 776, the energy bill which contains a provision to increase the CFC tax, effective January 1, 1993. A conference agreement combined the proposed ozone-depleting compound tax language contained in H.R. 776 with the proposed tax increases that were contained in the tax bill, H.R. 11. The bill was signed by the President on October 21, 1992.

The Conference agreement increased the previously stated amounts of the tax in both H.R. 11 and H.R. 776, and made the increase effective on January 1, 1993, instead of October 1, 1992. The Conference agreement lists the increased amounts for the ozone-depleting chemicals which were taxed by the 1989 CFC tax legislation (initially listed compounds) and those compounds which were taxed in the 1990 CFC tax legislation (newly listed compounds).

The initially listed compounds are CFC-11, CFC-12, CFC-113, CFC-114, CFC-115, Halon-1211, Halon-1301, and Halon-2402. The newly listed compounds are CFC-13, CFC-111, CFC-112, CFC-211, CFC-212, CFC-213, CFC-214, CFC-215, and CFC-216.

The law calls for an obligation of a floor stocks tax with the increased tax. It is imposed on taxed chemicals held on the effective date of changes in the base tax amount. The law retains the reduced rate for chemicals used in rigid foam insulation and provides a special rate for chemicals used for sterilizing medical devices. The Conference agreement provides for a reduced rate of tax for certain ozone depleting chemicals used as medical sterilants for 1993 and for ozone depleting chemicals used as propellants for metered dose inhalers for years after 1992. The reduced rate of tax is \$1.67 per pound for qualifying chemicals. The increased rates are as follows:

Year	Base Tax for Initially Listed Compounds	Tax Increase for Initially Listed Compounds	Total
1993	2.65	.70	3.35
1994	2.65	1.70	4.35
1995*	3.10	2.25	5.35
1996	3.35	2.25	5.80
1997	4.00	2.25	6.25

*For years after 1995, the base tax amount will increase by \$.45 per pound per year.

Year	Base Tax for Newly Listed Compounds	Tax Increase for Newly Listed Compounds	Total
1993	1.67	1.68	3.35
1994	3.00	1.35	4.35
1995*	3.10	2.25	5.35
1996	3.35	2.25	5.80
1997	4.00	2.25	6.25

*For years after 1995, the base tax amount will increase by \$.45 per pound per year.

ENCLOSURE 2

ADDITIONAL OZONE-DEPLETING COMPOUNDS TAXED

Congress revisited the issue of a tax on ozone-depleting compounds as the members attempted to enhance revenue in light of the nation's need to control the deficit. As a result, Congress passed a comprehensive deficit reduction law in October 1990 which included a new tax on only those Montreal Protocol controlled compounds which were not already subject to the existing tax: methyl chloroform, carbon tetrachloride, and the lesser used CFCs which were added to the Protocol in June (CFC-13, -111, -112, -213, -214, -215, -216, and -217).

It is estimated that the tax on these compounds will raise an additional \$100 million per year for fiscal years 1991-1995. It became effective on January 1, 1991, and provides for a floor stocks tax applicable to the taxed chemicals held for sale or use as of January 1, 1991. No deposits of tax payments which arise from tax liabilities on the chemicals need to be made prior to April 1, 1991.

The IRS regulations for the excise tax are available from the Alliance office.